Publishing Material Owned by Macquarie University

This information sheet is intended to provide assistance to Macquarie University employees when considering publication options for material owned by Macquarie University as copyright owner.

Macquarie University staff regularly publish material (articles, book chapters, conference papers etc) in their personal capacity for their scholarship and research. Where the University has not asserted copyright in a staff member’s material, it is a matter for the author/s to seek their own advice regarding any contracts they wish to enter into with a publisher.

Background
Unless an employment contract provides otherwise, or another exception applies, material (text, images, videos, sounds recordings, photographs etc) created by a University employee in the course of their employment for the fundamental purpose of fulfilling their employment obligations is generally the property of the University. This primarily relates to teaching and administrative material.

An important exception to this rule is material developed from the individual’s scholarship. This material is defined as a ‘scholarly work’ in the University’s Intellectual Property Policy and includes any article, book, manual, musical composition, digital or electronic media etc written by the individual for their scholarship, learning or research (Scholarly Works). The University does not generally assert copyright in this material.

Determining intellectual property ownership
The first matter to determine when considering publication is intellectual property ownership. If you are unsure about the ownership status of the material, the University’s Intellectual Property Policy is a good place to start. The following principles have been summarised from the policy as a starting point:

1. Material created by University employees in their course of employment is generally the property of the University as their employer. This includes all teaching materials.
2. Where material is not created in the course of employment, but the employee has used University resources or materials or relied on an opportunity provided by the University, the University may still assert some ownership in the intellectual property of the material.
3. The University does not assert ownership in Scholarly Works which includes any material (text, image, sound recording, video recording, software etc) that is created by the employee for their individual scholarship, learning and research.
   If you determine that you own the copyright in the material (i.e. it is a Scholarly Work) any publishing agreement should be between you and the publisher.

If you are unsure about whether material is owned by the University, advice can (and should) be obtained from the Office of Commercialisation and Innovation (OCI).
Material that is the intellectual property of Macquarie University

If the material to be used in a publication is the intellectual property of the University, you should contact the OCI before negotiating contracts with a publisher.

The OCI can confirm the ownership status of the material and assist with:

1. Checking all copyright clearances have been obtained.
   NOTE: If the work comprises some material that is not the intellectual property of the University, for example a photograph, graph, artwork, poem, short story created/written by a third party etc, permission from the copyright owner may need to be obtained before publication. In some cases, a copyright exception may apply to enable the use without the need to seek permission.

2. Navigating any complexities arising from the creation of the material, including where there are multiple authors.

3. Negotiating the terms of the publication agreement with the publisher/distributor/platform etc.

4. Obtaining advice from the Office of General Counsel to ensure that the terms are legally acceptable and risks are mitigated or managed.

Who owns the copyright?

Macquarie University assumes ownership of the intellectual property where the author/contributor as an employee has created the copyright works or other subject matter in the course of their employment. Where an author/contributor is external, honorary or a visiting member, a written agreement which assigns the third party intellectual property to the University will need to be obtained before any publishing rights can be granted.

FAQs

1. What materials are protected by law?

Images, text and diagrams are all examples of material that are protected by copyright, a type of intellectual property. Creators of this material have legally enforceable rights under legislation. These rights enable them to control how the work is used, i.e. copied, transmitted, distributed, shared online or adapted. There can be several creators of one work, known as joint authors, or a single author. Whether you are deemed to be an author in the work depends on your contribution.

2. How is the intellectual property ownership determined?

If the work was created by a Macquarie University staff member in the course of their employment, Macquarie University will generally be the owner of the intellectual property in the material. There are some exceptions to this rule, for example Scholarly Works. See the University’s Intellectual Property Policy. Any contributors may be asked to assign or reconfirm the intellectual property rights (their contribution) to the University. If third party contributors do not agree to assign their contributions to the University, it will not be possible to use their content in material to be published under the University’s name.
3. What if the intellectual property is not mine?
All staff members or third parties who have agreed to contribute material for a University publication must inform the University if any aspect of their contribution is subject to any pre-existing or third-party rights. For example, if the content was created while the individual was employed at another organisation or if the individual has used content (i.e. photographs) under licence from a third party. It is your responsibility to ensure you identify and disclose any material that you have not created.

4. What information should be provided to OCI prior to an Agreement being negotiated?
   1. Provide the working/confirmed title of the work.
   2. Identify the contributors, their employment status and contact details.
   3. Provide details of their contribution e.g., chapter title, photograph, image, figures etc.
   4. Confirm that existing IP is not encumbered.
   5. The Agreement must not be executed until all requisite information has been gathered and intellectual property ownership is clarified.

5. Why is a formal written agreement needed?
A written agreement should clearly articulate the key rights and obligations of the respective parties to ensure that expectations are aligned and to minimise the risk of a dispute. This includes matters such as the scope of any rights granted (i.e. duration, territorial limitations, rights in relation to any improvements or modifications, field of use), responsibility for any registrations, applicable jurisdictions, payment rights and details, records/reporting (i.e. for the purpose of determining royalties) and various other key contractual terms.

6. The work may receive financial reward. How is this processed?
The reward received from commercialisation of published/distributed work is processed by Finance as commercialisation income under the natural account code of 1654 (sale of materials).

7. How are contributors acknowledged?
It is important to ensure all contributors are comfortable with the level of acknowledgement they will receive in a publication. Where a contributor is a third party, this will need to be clearly set out in a written agreement with them. Where it is determined that the University is the copyright owner of the material, it is still necessary to acknowledge all authors who have contributed original material to the publication. These rights are enshrined in copyright law and are known as 'moral rights'. Moral rights include the right to be attributed for your original work as well as the right not to be falsely attributed. For further information, see the University’s Intellectual Property Policy.

8. Have you considered how your published edition will be disseminated?
Books remain popular mediums however digital versions and other ways to communicate your published work should be considered. Some examples include, sound recordings, cinematograph film, television and sound broadcasts.

9. Further resources
   Copyright
   Intellectual Property Policy
   Code for responsible conduct of research
   Authorship Standard
   Publication and Dissemination Standards

   Document owners: ip@mq.edu.au copyright@mq.edu.au